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No. 01-442

IN THE

Supreme Court of the United States

CAROLE KEETON RYLANDER, Comptroller of Public Accounts of the State of Texas, and JOHN CORNYN, Attorney General of the State of Texas,
Petitioners,

v.

THE DOW CHEMICAL COMPANY,
Respondent.

On Petition for Writ of Certiorari to the Third Court of Appeals of Texas

Brief *Amicus Curiae* of Multistate Tax Commission in Support of Petitioners

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Question Presented

Whether *Todd Shipyards* admits of exceptions for independently procured insurance taxes that (i) are in the nature of a compensatory use tax; (ii) are non-discriminatory in whole or in part with respect to similar transactions occurring within the taxing State; (iii) are placed with affiliated insurance subsidiaries; or (iv) cover insureds within an affiliated group that includes subsidiaries organized or having a commercial domicile within the taxing State.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

ARGUMENT 3

THE COURT SHOULD ISSUE A WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS IN ORDER TO REVISIT *TODD SHIPYARDS*. 3

A. *The Clear Statement Doctrine Applies, Because The Texas Ruling Preempts Essential State Taxing Power, Favors Multijurisdictional Commerce Over Intrastate Commerce, And Practically Ensures Large, Sophisticated Insureds Will Avoid Normal State Taxation In The Acquisition Of Insurance.* 4

B. *The Direction Of The Texas Court of Appeals To Enter Summary Judgment For The Taxpayer Was Erroneous And Affords The Court An Opportunity To Clarify* Todd Shipyards. 7

1. *Todd Shipyards* Did Not Identify Any Clear Statement Establishing Congressional Intent To Preempt The Texas Tax. ... 7

2. The Holding In *Todd Shipyards* Is More Limited Than Conventional Wisdom Suggests. 11

3. This Matter Is Both Legally And Factually Distinguishable From *Todd Shipyards* And Affords A Reasonable Opportunity To Clarify That Decision. 13

a. The Texas Tax Does Not Reach Out-Of-State Transactions. 13

b. The Texas Tax Does Not Regulate Out-Of-State Transactions. 15

c. Other Facts Suggest That The Texas Tax Does Not Tax Or Regulate Out-Of-State Transactions. 16

CONCLUSION 18

TABLE OF AUTHORITIES Page

Cases:

Allgeyer v. *Louisiana*, 165 U.S. 578 (1897) 7,9

Camps Newfound/ Owatonna v. Town of Harrison, 520 U.S. 564 (1997) 16

Compania General de Tabacos de Filipinas v. *Collector of Internal Revenue*, 275 U.S. 87 (1927) 10

Connecticut General Life Ins. Co. v. *Johnson*, 303 U.S. 77 (1938) 7,9,10

Container Corp. of America v. *Franchise Tax Bd.*, 463 U.S. 159 (1983) 13

Department of Revenue v. *ACF Industries, Inc.*, 510 U.S. 332 (1994) 5,7

Dow Chemical Co. v. *Rylander*, 38 S.W.3d 741 (2001) 2

Dows v. *City of Chicago*, 11 Wall. 108 (1871) 5

Electric Bond & Share Co. v. *SEC*, 303 U.S. 419 (1938) 16

Ex parte Collett, 337 U.S. 55 (1949) 7

General Motors Corp. v. *Washington*, 377 U.S. 436 (1964) 13

General Trading Co. v. *State Tax Comm'n*, 322 U.S. 335 (1944) 14

Gregory v. *Ashcroft*, 501 U.S. 452 (1991) 4,7

Henneford v. *Silas Mason Co.*, 300 U.S. 577 (1937) 14

Hoopeston Canning Co. v. *Cullen*, 318 U.S. 313 (1943) 10

Hughes v. *Oklahoma*, 441 U.S. 322 (1979) 17

McKesson Corp. v. *Div. of Alcoholic Beverages & Tabacco, Fla. Dept. of Business Regulation*, 496 U.S. 18 (1990) 16

McLeod v. *J.E. Dilworth Co.*, 322 U.S. 327 (1944) 14

Mobil Oil Corp. v. *Comm'r of Taxes*, 445 U.S. 425 (1980) 6

National Private Truck Council, Inc. v. *Oklahoma Tax Comm'n*, 515 U.S. 582 (1995) 5

Norton Co. v. *Dept. of Revenue*, 340 U.S. 534 (1951) 13

Oklahoma Tax Commission v. *Jefferson Lines, Inc.*, 514 U.S. 175 (1995) 11

Osborn v. *Ozlin*, 310 U.S. 53 (1940) 10

Prudential Insurance Co. v. *Benjamin*, 328 U.S. 408 (1946) 7

Rodriguez de Quijas v. *Shearson/American Express, Inc.*, 490 U.S. 477 (1989) 3

Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) 6

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U.S. 346 (1922) 7,9,10,11,15

State Board of Insurance v. *Todd Shipyards Corp.*, 370 U.S. 451 (1962) ..... *passim*

State Tax Commission v. *Pacific States Cast Iron Pipe Co.*, 372 U.S. 605 (1963) 11

United States v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944) 8

United States Steel Corp. v. *Multistate Tax Comm'n*, 434 U.S. 452 (1978) 1

Western Live Stock v. *Bureau of Revenue*, 303 U.S. 250 (1938) 5

Wisconsin v. *J.C. Penney Co.*, 311 U.S. 435 (1940) 5

Statutes and Legislative Material:

15 U.S.C. §1012(b) (1994) 7

H.R. Rep. No. 143, 79th Cong., 1st Sess., p. 3 9,12

Mobile Telecommunications Sourcing Act, Pub. Law 106-252, 114 STAT. 626, 628 and 629 (2000), codified at 4 U.S.C. §§ 119(a)(2)C) and 120(b)(1) 1

MULTISTATE TAX COMPACT, RIA ALL STATES TAX GUIDE ¶ 701 *et seq.*, p. 657 (2001) 1

Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 §101(b), Pub. L. 103-328, 108 STAT. 2338 (1994), 12 U.S.C. 1831u(c)(1)(A) (1994) 8

Telecommunications Act of 1996 §602(c), Pub. L. 104-104, 110 STAT. 56, (1996), note to 47 U.S.C. §152 (1994 supp. 5) 8

Tex. Ins. Code §2(e), art. 21.38 14

Tex. Ins. Code §101.252(a) and (b) 14

TITLE II of PUB. L. NO. 86-272, 73 STAT. 555, 556 (1959) 2

Articles:

D. Brunori, *Interview: Gene Corrigan, a 'Proud Parent' of the MTC*, 17 STATE TAX NOTES 1295 (November 15, 1999) 2

J.T. Taylor, *Whither* Todd Shipyards*: State Power to Impose Premium And Self-Procurement Taxes*, 21 STATE TAX NOTES 585 (2001) 6,15

BRIEF *AMICUS CURIAE* OF MULTISTATE TAX COMMISSION IN SUPPORT OF PETITIONERS[1]

INTEREST OF *AMICUS CURIAE*

The Multistate Tax Commission[2] is the administrative agency of the MULTISTATE TAX COMPACT. *See* RIA ALL STATES TAX GUIDE ¶ 701 *et seq.*, p. 657 (2001). Twenty-one States have legislatively established full membership in the COMPACT. In addition, five States are sovereignty members and sixteen States are associate members.[3] The Court upheld the validity of the COMPACT in *United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452 (1978).

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[1]No counsel for any party authored this brief in whole or in part. Only *Amicus* Multistate Tax Commission and its members States through the payment of their membership fees made any monetary contribution to the preparation or submission of this brief. Finally, this brief is filed pursuant to the consent of the parties.

[2] Congress has recognized the Commission as facilitating state taxation of interstate commerce. Mobile Telecommunications Sourcing Act, Pub. Law 106-252, 114 STAT. 626, 628 and 629 (2000), codified at 4 U.S.C. §§ 119(a)(2)C) and 120(b)(1).

[3] The COMPACT parties are Alabama, Alaska, Arkansas, California, Colorado, District of Columbia, Hawaii, Idaho, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah and Washington. The Sovereignty members are Florida, Kentucky, Louisiana, New Jersey and Wyoming. The Associate members are Arizona, Connecticut, Georgia, Illinois, Maryland, Massachusetts, Mississippi, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, West Virginia and Wisconsin.

Historically, the COMPACT evolved out of concern of the States and multistate taxpayers about proposed federal legislation to regulate state tax systems that followed the findings and recommendations of the Willis Committee.[4] *See* D. Brunori, *Interview: Gene Corrigan, a 'Proud Parent' of the MTC*, 17 STATE TAX NOTES 1295 (November 15, 1999). The States' primary interest in forming the COMPACT was to safeguard State taxing power in the context of multijurisdictional commerce, an essential governmental power if the States were to fulfill their constitutional role.

The Commission reviews state decisions that preempt or restrict state tax sovereignty, because when wrongly decided they can have a perverse influence over the development of the law in the remaining States.

The Commission views *Dow Chemical Co.* v. *Rylander*, 38 S.W.3d 741 (Tex. App.—Austin 2001, pet. denied), with considerable concern. Without a clear congressional mandate, the decision preempts the essential taxing power of a State, departs from neutrality by favoring interstate and international commerce over intrastate commerce, and, in practical effect, ensures that a transaction that is normally subject to tax in the several States will not be taxed at all.

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[4]The Willis Committee, a congressional study of State taxation of interstate commerce sanctioned by TITLE II of PUB. L. NO. 86-272, 73 STAT. 555, 556 (1959), made extensive recommendations as to how Congress could regulate State taxation of interstate and foreign commerce.

If injurious preemption without a clear congressional mandate were not enough, the decision also mechanically relies upon *State Board of Insurance* v. *Todd Shipyards Corp.*, 370 U.S. 451 (1962). The holding of *Todd Shipyards* is markedly more limited than many suppose and is of questionable pedigree. The hasty application of *Todd Shipyards*, as occurred in this matter, also has the unwarranted potential to broaden the impact of the case.

Finally and this is important to appreciating the need for review, the injurious effect of this case to federalism arises from the understandable failure of the Texas Court of Appeals to examine factual differences that could have distinguished *Todd Shipyards*. The failure is attributable to the respect the Texas Court of Appeals gave to the precedent of the Supreme Court. *Dow Chemical Co.* v. *Rylander*, 38 S.W.3d at 746) (bound by Supreme Court precedent citing *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)). A full examination of the factual record would have afforded a reasonable opportunity to catalogue possible differences from *Todd Shipyards* and thereby avoid an unwarranted, expansive application of that decision.

ARGUMENT

THE COURT SHOULD ISSUE A WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS IN ORDER TO REVISIT *TODD SHIPYARDS*.

The Commission supports review because it is time to reassess the holding in *Todd Shipyards* and determine whether that decision would benefit from

clarification. This case presents a well-founded basis for that reassessment. As noted by the Texas Court of Appeals, only the Court has the freedom to examine its precedent. If there is to be any relief from unwarranted interpretations of *Todd Shipyards*, the States necessarily are totally dependent upon the Court's willingness to manage its jurisprudence. Although there are often intense national and international pressures that demand a convenient national solution for many problems, this matter presents a specific instance where federal preemption is not well founded in fact or law.

A. *The Clear Statement Doctrine Applies, Because The Texas Ruling Preempts Essential State Taxing Power, Favors Multijurisdictional Commerce Over Intrastate Commerce, And Practically Ensures Large, Sophisticated Insureds Will Avoid Normal State Taxation In The Acquisition Of Insurance.*

The decision at issue has obvious negative consequences for the States that would be avoided through the application of the Court's clear or plain statement doctrine. *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-61 (1991). The decision by mechanically relying upon *Todd Shipyards* ignores fundamental constitutional values that are well established in the jurisprudence of the Court.

The Texas Court of Appeals held that the taxing power of the State of Texas is preempted by congressional legislation. Yet, state taxing power is an essential attribute of sovereignty of the constituent States within our Federal Union. Whether construing the Constitution or a congressional statute, the Court has cautioned against quick and superficial findings that the state taxing

power is barred. *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U.S. 582, 587 (1995), *quoting Dows* v. *City of Chicago*, 11 Wall. 108, 110 (1871) ("It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible."); *Department of Revenue* v. *ACF Industries, Inc.*, 510 U.S. 332, 345 (1994); *Wisconsin* v. *J.C. Penney Co.*, 311 U.S. 435, 444 (1940).

The decision further favors the acquisition of insurance outside of the taxing State, whether in interstate or international commerce, in order to escape the imposition of a tax that would otherwise apply in the context of the acquisition of the insurance within the State. *See Todd Shipyards*, 370 U.S. at 458 (Black, J., dissenting).

Finally, the decision turns its back on a basic constitutional value that multijurisdictional commerce should pay its fair share of state taxes. *Western Live Stock* v. *Bureau of Revenue*, 303 U.S. 250, 254 (1938)("It was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business. 'Even interstate business must pay its way.' "). In effect, the decision allows large, sophisticated multijurisdictional insureds to avoid normal state taxes associated with insurance altogether. This result obtains because the decision rejects apportionment, a method for determining the tax due by the measure of the tax base that is connected with the taxing State. And this matter

apparently does not raise any question of fair apportionment, App. B7, or duplicative taxation. The rejection of apportionment occurs even in the face of insurance taxation being a substitute for an income tax, J.T. Taylor, *Whither* Todd Shipyards*: State Power to Impose Premium And Self-Procurement Taxes*, 21 STATE TAX NOTES 585 (2001), that is normally apportioned. Instead the decision favors taxation based upon artificial concepts like the "place of contracting" or "place of payment of the premium." These concepts facilitate tax planning to ensure that the insurance coverage is associated with a single jurisdiction that does not seek to exercise any taxing authority with respect to the insurance.

The rejection of apportionment is surprising, because the Court does not necessarily favor taxation by allocation resulting in a single taxing jurisdiction. *Cf. Mobil Oil Corp.* v. *Comm'r of Taxes*, 445 U.S. 425, 443-46 (1980) (Constitution does not favor taxation based upon corporate domicile; "'the reason for a single place of taxation no longer obtains' when the taxpayer's activities with respect to the intangible property involve relations with more than one jurisdiction.").

We suggest that any of these adverse consequences would counsel clear caution in finding Texas is barred from imposing its independently procured insurance tax. Indeed, the Court has counseled against decisions that reach for an interpretation of a congressional statute that curtails traditional state power without a clear and manifest congressional purpose. *See Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). While the Court has developed the clear statement doctrine in more saturated colors since its decision

in *Todd Shipyards*, *e.g.*, *Gregory* v. *Ashcroft*, *supra*, *ACF Industries*, *supra*, the very statute under consideration here sought to *empower* state tax authority and warned against construction of state tax preemption that was not expressly stated. 15 U.S.C. §1012(b) (1994); *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408, 430-31 (1946) (Commerce Clause exceptions to state regulation and taxation of insurance were to be "expressly provided for.").

B. The Direction Of The Texas Court of Appeals To Enter Summary Judgment For The Taxpayer Was Erroneous And Affords The Court An Opportunity To Clarify Todd Shipyards.

1. *Todd Shipyards* Did Not Identify Any Clear Statement Establishing Congressional Intent To Preempt The Texas Tax.

The reliance of the Texas Court of Appeals upon *Todd Shipyards* was misplaced, because, contrary to this Court's own assertion in *Todd Shipyards*, there is no clear statement that establishes a congressional intent to preempt the Texas tax. Regardless of the propriety of resorting to legislative report language in the face of a clear and unambiguous statute, *Ex parte Collett*, 337 U.S. 55, 61 (1949), the actual legislative report language is inconsistent with the Court's conclusions about Congress' arch-based design. Further, the Court's analysis of the frozen trilogy, *Allgeyer* v. *Louisiana*, 165 U.S. 578 (1897), *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U.S. 346 (1922), and *Connecticut General Life Ins. Co.* v. *Johnson*, 303 U.S. 77 (1938), is incomplete.

The report language says no more than the legislation is restoring the *status quo ante.* The McCarran-Ferguson Act did not increase or detract from state powers as they existed prior to *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944). (Expressions of this kind of neutral understanding are common when Congress changes the regulatory landscape that implicates state sovereignty. *See* Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 §101(b), Pub. L. 103-328, 108 STAT. 2338, 2341 (1994), 12 U.S.C. 1831u(c)(1)(A) (1994); Telecommunications Act of 1996 §602(c), Pub. L. 104-104, 110 STAT. 56, 143-44 (1996), note to 47 U.S.C. §152 (1994 supp. 5).)

While Congress stated state regulation and taxation was subject to the "controlling decisions of the Court," an ordinary, plain interpretation of that phraseology would be that the Supreme Court's subsequent decisions would also control. The report language did *not* say, "the controlling decisions of the Supreme Court *as they now exist.*"

The absence of any stated intention to freeze the Supreme Court's due process interpretations in time mirrors the jurisprudential context surrounding the enactment of McCarran-Ferguson. The holding of *South-Eastern Underwriters* remained intact: state regulation and taxation of insurance remained within the ambit of Congress. Congress at anytime under its newly recognized Commerce Clause powers could step in.

At most, the significance of the report language is reflected in the statement, "a State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction by individuals or

corporations resident or domiciled therein covering risks within the State or to regulate such transactions in any way." H.R. Rep. No. 143, 79th Cong., 1st Sess., p. 3. But that statement is a far cry from stating that a State was powerless to tax the *insured* in all respects.

In addition to a problematic interpretation of legislative report language, *Todd Shipyards* did not completely analyze the precedent that Congress purportedly wished to enshrine. The holdings of the frozen trilogy of *Allgeyer*, *St. Louis Cotton Compress*, and *Connecticut General* are limited and do not support preemption in this case.

Allgeyer involved criminal sanctions imposed to prevent a resident from procuring insurance outside the State from a non-admitted carrier. The State in *Allgeyer* thus attempted to regulate, that is, prohibit, by criminal sanction, activities occurring outside its borders, something a State is powerless to do under the Due Process Clause.

St. Louis Cotton Compress, likened to *Allgeyer* by Justice Holmes, involved an attempt by a State to impose a tax greater than what was imposed on an authorized insurer. This differential amounted to a practical impediment to acquiring insurance outside of the taxing State. "The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the State." *St. Louis Cotton Compress*, 260 U.S. at 348-49. Thus, *St. Louis Cotton Compress* also involved a taxing State attempting to regulate outside conduct.

(The Court's explanation of *St. Louis Cotton Compress* in *Compania General de Tabacos de Filipinas* v. *Collector of Internal Revenue*, 275 U.S. 87, 95 (1927), is not pertinent to this point. First, the Court in *Todd Shipyards* honored under supposed congressional direction the frozen trilogy without reference to other due process decisions. Thus, the Court disregarded *Osborn* v. *Ozlin*, 310 U.S. 53 (1940), and *Hoopeston Canning Co.* v. *Cullen*, 318 U.S. 313 (1943). *Todd Shipyards*, viewed *St. Louis Cotton Compress* as standing on its own. Alone *St. Louis Cotton Compress* clearly relies upon the discriminatory tax aspect to reach its decision. Second, Justice Holmes, author of *St. Louis Cotton Compress* opinion, dissented from the majority's view as to whether the decision was dependent upon a discriminatory tax regime. *Tobacos*, 275 U.S. at 99. See also Justice Black's observation during the oral argument in *Todd Shipyards* that subsequent statements in the *Tabacos* case fit more comfortably into Justice Holmes' view of the matter than the majority's. Tr. 38.)

Finally, *Connecticut General* did not even involve taxation of the insured. California, the taxing State, attempted to tax directly the operations of the insurer that were described as occurring outside of, and unrelated to, the taxing State.

In light of these considerations the Court's characterization of the frozen trilogy in *Todd Shipyards* is incomplete. While these cases may have had some sanctity in the eyes of Congress, they do not control the disposition of this case.

2. The Holding In *Todd Shipyards* Is More Limited Than Conventional Wisdom Suggests.

Todd Shipyards itself really says no more than a State may not seek to tax or regulate a "transaction" occurring outside the State. Understood in this light, the principle is unremarkable. *Oklahoma Tax Commission* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 184 (1995); *State Tax Commission* v. *Pacific States Cast Iron Pipe Co.*, 372 U.S. 605, 605-06 (1963) (*per curiam*). Reference to arguments of counsel and the Court's reasoning will document this understanding.

The State in *Todd Shipyards* sought to uphold its tax as a regulation governing "the placing of insurance by resident insureds with unauthorized insurers on risks located in Texas," Pet. Br. 7-8, that is, "to reduce the number of owners of Texas risks who purchase insurance from unauthorized companies by making it *more* expensive to do business with unauthorized insurance companies." *Id.* at 10 [emphasis added]. *See also* Tr. Oral Arg. at 21. The State conceded that in order to prevail *St. Louis Cotton Compress* would have to be overruled. *Id.* at 11-12.

The taxpayer in *Todd Shipyards* viewed the matter as an attempt by the State to tax an event, whether it was described as the payment of the premium or the formation of an insurance contract, that occurred wholly without the taxing State. Resp. Br. 2-3, 22. *See also* Tr. Oral Arg. at 33-34 ("This is a tax on a premium payment" and this taxable event only occurs in New York City.) and 43-44 (one pivotal distinction is whether the tax is on a Texas or New York contract).

The opinion in *Todd Shipyards* reflects the due process principle that bars state taxation or regulation of events occurring outside the State. First, the Court characterizes the Texas tax as a "tax on premiums paid out-of-state on out-of-state contracts." 370 U.S. at 453. Second, the Court observes, "The insurance transactions involved in the present litigation take place entirely outside Texas," and thereafter places extraordinary emphasis on the *insurer's* relationship to the taxing State, when superficially at least the tax was on the insured and not the insurer. *Todd Shipyards*, 370 U.S. at 454-55. Third, the Court quotes the language in the legislative report assessing the meaning of the frozen trilogy. This language is critical, because it is Congress' understanding of what it was supposedly preserving by referencing the frozen trilogy. "[A] State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction by individuals or corporations resident or domiciled therein covering risks within the State or to regulate such transactions in any way." 370 U.S. at 455-56, quoting H.R. Rep. No. 143, 79th Cong., 1st Sess., p. 3. Fourth, the Court makes reference to the *amicus* brief of a small insurance company by noting "how severe the impact would be on small insurance companies should the old rule be changed." 370 U.S. at 457. The concern of the small insurance company was the risk of multiple taxation and conflicting regulation, again reflecting regulation and taxation of a transaction outside of the State. Br. Church Fire Ins. Corp. and Catholic Relief Ins. Co. of American at 13.

3. This Matter Is Both Legally And Factually Distinguishable From *Todd Shipyards* And Affords A Reasonable Opportunity To Clarify That Decision.

If *Todd Shipyards* holds no more than a State may not exercise extraterritorial domain by taxing or regulating out-of-state transactions, the appropriate question is whether *Todd Shipyards* applies because the State of Texas has attempted to do that here. We submit that the meager record of this case that was disposed of on cross motions for summary judgment does not support that conclusion.

In fact, the record suggests potential differences that the Texas Court of Appeals ignored due to the binding effect of *Todd Shipyards*. These differences call for plenary consideration of all pertinent details in a trial proceeding conducted on remand. In assessing the record for the potential differences, it is important to recall that the taxpayer has the burden to establish any exemption, including exemptions based upon constitutional principles. *Norton Co.* v. *Dept. of Revenue*, 340 U.S. 534, 537 (1951); *see also, General Motors Corp.* v. *Washington*, 377 U.S. 436, 441-42 (1964); *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. 159, 175-76 (1983). Lapses in the record are generally borne by the taxpayer.

a. The Texas Tax Does Not Reach Out-Of-State Transactions.

One obvious difference here is that the State of Texas embraces the idea that the independently procured insurance tax resembles a compensatory use tax. Pet. Writ of Cert. at 13-14. In *Todd*

Shipyards Texas apparently ran away from that characterization. Tr. Oral Arg. at 19-20. That reality undoubtedly contributed to the perspective that the majority held that the tax was a tax on the formation of the contract of insurance and the payment of the applicable premium, rejecting in the process Justice Black's views.

The validity of a compensatory use tax is familiar territory to the Court. *See Henneford* v. *Silas Mason Co.*, 300 U.S. 577 (1937) (application of discriminatory compensatory use tax to property acquired out of state upheld to preserve tax neutrality). We see nothing unusual in applying a compensatory use tax in the context of insurance.

Texas's change of heart this time around is buttressed by a change in the language of the Texas tax. Former Section 2(e) of Article 21.38 of the Texas Insurance Code under which *Todd Shipyards* was decided, 370 U.S. at 453 n.2, was suggestive of a tax on *premiums paid for the insurance.* See Pet. Br. at 2, *Todd Shipyards.* The current tax under Tex. Ins. Code §101.252(a) and (b) appear to be on a value that is measured by the portion of the premiums that are attributable to the risk or exposure located in Texas.

This difference in language, however subtle, is similar to fine distinctions on taxability that the Court has made in an analogous circumstance. *Compare McLeod* v. *J.E. Dilworth Co.*, 322 U.S. 327 (1944) (destination or consuming State could not impose a sales tax with respect to a sale that did not occur within its boundaries), *with General Trading Co.* v. *State Tax Comm'n*, 322 U.S. 335 (1944) (but consuming State could impose a use tax with

respect to the article acquired by a sale occurring outside its boundaries).

While Dow Chemical may wish to contest any resemblance to a compensatory use tax, that issue is not one for the Court to resolve at this stage without first hearing from the Texas courts. Review at this stage may reasonably be limited to determining whether *Todd Shipyards* admits of an exception for an insurance tax in the nature of a compensatory use tax. This kind of decision would be useful to the States. Remand on this ground would free up the Texas courts (and other States' courts and legislatures) to consider whether the insurance tax imposed on independently procured insurance was of a character to withstand a holding of *Todd Shipyards* that was more limited in aspect than some may assert. *See* Taylor, *Whither* Todd Shipyards, 21 State Tax Notes at 590.

b. The Texas Tax Does Not Regulate Out-Of-State Transactions.

As noted above, pp. 9-10, *St. Louis Cotton Compress* characterizes a tax as regulatory with respect to out-of-state transactions when the tax is discriminatory. By imposing a discriminatory insurance tax, the taxing State imposes a penalty for securing insurance outside of the State. While the record is not fully developed on this issue, review of this matter could lead to a remand to allow the Texas courts to determine whether, and/or to what extent, the independently procured insurance tax is discriminatory. Remand on this ground would be helpful to the States, because it would signal to the States that the discriminatory aspect of an indepen-

dently procured insurance tax is a critical element in the analysis to apply *Todd Shipyards*.

Assessing the level, if any, of discrimination also would allow consideration of *McKesson Corp.* v. *Div. of Alcoholic Beverages & Tabacco, Fla. Dept. of Business Regulation*, 496 U.S. 18, 40 (1990) (due process remedy for unconstitutional discriminatory tax may be cured by refunding the discriminatory portion of the tax). The Texas courts, to the extent discrimination is raised, should be allowed the first instance to make the determination of its possible existence and thereafter to fashion appropriate relief. *McKesson*, 496 U.S. at 51.

c. Other Facts Suggest That The Texas Tax Does Not Tax Or Regulate Out-Of-State Transactions.

Additional facts in the record suggest that this matter should be reviewed for a possible remand in order to apply a different understanding of *Todd Shipyards*.

First, one of the insurers, Timber, and later Dorintal, App. B68-69, are apparently insurance subsidiaries of Dow Chemical. App. B12. These subsidiaries may well be located in Bermuda. App. B12, B46. A remand after review would allow the Texas courts to consider whether the relationship of the insurance subsidiaries to the Dow Chemical enterprise took the insurance transactions out from under *Todd Shipyards*. Cf. *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419, 440 (1938) (Commerce power is not defined by reference to separately organized subsidiaries of an enterprise); *Camps Newfound/ Owatonna v. Town of Harrison*, 520 U.S. 564, 574

(1997), *quoting Hughes* v. *Oklahoma*, 441 U.S. 322, 326 n.2 (1979). ("The definition of 'commerce' is the same when relied on to strike down or restrict state legislation as when relied on to support some exertion of federal control or regulation.").

Second, the technical term "insureds" is defined under both the Starr and the Timber (later Dorintal) policies to include defined subsidiaries of Dow Chemical. App. B40-41, B48. The record does not disclose whether any of these "insureds" are companies organized or having their commercial domicile in Texas. In light of the identity of possible insureds, the out-of-state payment of all possible covered losses hardly should be accorded significance in determining the possible application of the Texas tax. Arranging for loss payment out-of-state might be well nothing more than using an agent to cover the insured's Texas loss. We also note in this regard that the Timber (later Dorintal) policy contains coverage that is specified to Texas in particular. App. at B54, B72.

CONCLUSION

In mechanically applying *Todd Shipyards* and directing entry of a summary judgment the Texas Court of Appeals has applied an incorrect legal standard. The Court's acceptance of this matter for review offers a reasonable opportunity to delineate additional factors that make *Todd Shipyards* inapplicable in these circumstances. Due to the Court's own requirements that govern adherence to existing precedent, only this Court is in a position to indicate admitted exceptions to *Todd Shipyards* that are raised in this case. Without taking this matter for review, *Todd Shipyards* will continue to

challenge state courts and prevent States from ensuring that the commerce of insurance bears it fair share of state taxes. The willingness of the Court to reconsider one of its problematic precedents can only increase the institutional authority of the Supreme Court of the Land.

RESPECTFULLY SUBMITTED,

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